

# The South Carolina Supreme Court

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Appeal from Clarendon County  
Court of Common Pleas  
Case No. 2019-CP-14-00263

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**Aug 22 2023**

**S.C. SUPREME COURT**

On Writ of Certiorari to the Court of Appeals

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Appellate Case No.: 2023-000098

Alvetta L. Massenberg,

Petitioner,

v.

Clarendon County Treasurer, Clarendon County  
Delinquent Tax Collector, Blacktop Ventures, LLC,

Respondents.

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REPLY BRIEF OF PETITIONER

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## QUESTION PRESENTED

**Did the Court of Appeals err in issuing a per curiam opinion, made without oral argument, affirming the Clarendon County Master-in-Equity's order that did not set aside a delinquent tax sale where the evidence before the Master-in-Equity proved that the notice of levy was not posted in a conspicuous place?**

## REPLY

### **The Notice Was Not Conspicuously Posted on the Property**

The Respondent challenges the contention of the Petitioner that the posting of the Notice of Levy on the property was at a conspicuous place since the Notice was posted on a less traveled one lane dirt farm road surrounded by dense forested lands, and on the "back line" of Petitioner's property. Aerial photograph views of the posting area show the forest lands on Exhibits (ROA 51, 52, 53, and 94). These same views show several houses on Plowden Mill Road, a paved South Carolina state highway. The witness Frierson testified "There are no homes on the county (Durant) road." (ROA 37, l. 15-18).

The Respondent overlooks the purpose of the posting which is to give notice to the Petitioner that her property was being seized and was about to be sold by a public sale. Failure to post the Notice of Levy on the property's highway frontage constitutes a fundamental defect in the tax proceedings which renders the proceeding absolutely void. Donohue v. Ward, 298 S.C. 75, 378 S.E.2d 261 (Ct.App.1989).

The placing of a notice of levy away from the main frontage road on which the Petitioner might travel to or from her property defies reason and should not be acceptable as "a conspicuous posting" since it is less likely to give notice to the Petitioner. This Court will set aside such a

sale where section 12-51-40(c) has not been complied with by public officials. See, Snelgrove v. Lanham, 298 S.C. 302, 379 S.E.2d 904 (1989). Tanner v. Florence County Treasurer, 336 S.C. 552, 521 S.E.2d 153 (S.C. 1999).

Respondent also at page 7 of its brief suggests that the notice posting on Robert Reese Durant Road “in fact likely provided more opportunity for local residents to see the notice than if it had been placed on Plowden Mill Road.” This argument is highly questionable since all of the neighbors live on or near Plowden Mill Road. There are no houses on Robert Rees Durant Road (ROA 37). The first notice the Petitioner had that her property had been taken and sold was when the next door neighbor on Plowden Mill Road called on January 2, 2019, and stated that timber was being cut on the Petitioner’s land. (ROA 33 and 34).

### CONCLUSION

Petitioner respectfully requests that the Court set aside the order of the Master-in-Equity and the opinion of the Court of Appeals rendered without oral argument on the grounds that the posting on her property was not in strict compliance with S.C. Code Section 12-51-40(c) and the sale of her property should be set aside and the relief which she prayed for in her brief should be awarded.

Respectfully submitted,

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